

The Commercial Legal System of the Sultanate of Oman

Introduction

The Sultanate of Oman ("Oman") has seen a decade of progress in the development of its legal institutions warranted by the expansion of trade, commerce and industry. Besides providing a set of guidelines governing commercial behavior, the legal system has also served to improve and modernize local business and banking practices. Moreover, this legal and economic renaissance has been consistent with an enlightened understanding and application of Sharia law within the framework of current social conditions in Oman.

I. The Sources of Law in Oman

Oman has three basic parallel interrelated sources of law. In the first instance there is the fundamental source, Islamic law, which is derived from the Koran, the Sunna (example or precedent of the Prophet as recorded in the Hadith or tradition), the Ijma (consensus of the scholars) and the Qiyas (reasoning by analogy).¹ Islamic law is applied mainly through a system of Sharia courts, though its application is also found to a limited extent in the commercial secular tribunals in Oman.

Secondly, there is a statutory system of law expressed in Royal Decrees and Ministerial Decisions which are promulgated in the Official Gazette of the Sultanate of Oman (O.G.S.O).

Thirdly, as is the case with any civilized country, Oman recognizes private international law as applied to commercial and financial transactions.

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¹J. SCHACHT, AN INTRODUCTION TO ISLAMIC LAW 17,114.

While these systems arise from different sources, they are interdependent rather than independent. The legal system of Oman is being increasingly formalized and in the past decade this effort has been concentrated on promoting a set of legal rules which are fundamental to any system of government and the administration of justice.

II. History of the Legislative Progress in Oman

Oman is in the position of being able to select from several different legal systems in order to forge a body of law suitable for its own purposes with the aim of encouraging rapid but rational progress. Each available system has, of course, advantages as well as limitations which must be evaluated before they are applied to the needs of Oman.

1. *Napoleonic Code*

The French Napoleonic Code has seen great application in the Middle East having been adopted in such diverse areas as Egypt and Turkey. Thus the merging of this system into the Omani legal framework would have several advantages, namely:

1. Since it enjoys a wide recognition in the Middle East, businessmen from other parts of the world would be readily able to understand it and make use of it, with a minimum of modification, as the Napoleonic Code contained a variety of Islamic Rules.²
2. Consultants, administrators and professionals from Arab countries would be readily available, and able to apply their skills with a minimum of retraining.
3. A published law would be more likely to ensure consistency in the theory behind the law as well as its application and practice.

However, the French legal system undoubtedly has certain disadvantages:

1. It is based upon a European philosophical, ethical and religious foundation. As such, in many respects, its underlying basis and rationale is alien to an Islamic country such as Oman and accordingly thorough re-evaluation and redrafting would be required to ensure that it would meet the requirements of the Islamic society found in Oman.
2. The French system has worked in the context of a fully developed rather than a developing country. Changes in the law in a developing country are not gradual but occur in quantum leaps requiring constant updating and re-evaluation and thereby imposing an additional burden on modern governments. The process of continuous re-evaluation and modification is certain to lead to anomalies and confusion, which is primarily what the law is intended to avoid.
3. The administration of such a legal system has historically resulted in the growth of a large bureaucracy. Aside from the financial burdens concomitant with large scale public employment, the growth of regulations, offices, application and licenses attendant to such bureaucracy has had the effect of stifling legitimate private enterprises and initiative. Furthermore, the concentration of

²FARHAT J. ZIADEH, *PROPERTY LAW IN THE ARAB WORLD*.

power into many diverse governmental offices makes control of these offices much more difficult and can lead to corruption and inconsistent application of the laws, especially if the decision maker is not required to adhere to precedent or to give complete justification of his decision.

2. *Common Law*

The main advantage of the Common Law is its inherent flexibility and its applicability.

Much of the Islamic law developed in a similar pattern as the Anglo-American Common Law. As such, this body of knowledge inherent in the country, i.e., the Common Law, can be immediately applied as a working base. Unlike the Napoleonic Code, it adapts to reflect the requirements of changing technological and social structures of a developing country, and constant legislative revision should not be necessary.

The Common Law is the system imported by the British and is familiar to those educated in England, Pakistan and India as well as the United States. It is implicit in the practices of the banking community which has resort to Common Law principles in equity but augments them with a more comprehensive set of guidelines and procedures. In a variegated population as existing in Oman the Common Law is also readily understood by the expatriate managerial class from the Indian subcontinent. Hence modifications to the Common Law in the form of Royal Decrees or ministerial decisions can be readily promulgated to meet specific needs.

3. *Islamic Legislation*

The history of Islamic Law is replete with developments inherent in the Omani legal system.³ An appreciation that certain matters of government and administration needed precise direction from the government arose early in the history of Islamic Law.⁴ In another sultanate in another time, the preeminent Sultan of the Ottoman Empire was known in the West as Suleiman "The Magnificent." However, in Islam, he is known as Suleiman "The Lawgiver" because of his efforts in codifying the law.⁵ The ongoing codification of the law was thus seen in the Islamic world as complementary to the principles of Sharia.

In much the same fashion, H.M. Sultan Qaboos bin Said bin Taimur al Said has presided over the gradual codification of the laws in the Sultanate initiated by the advent of the commercial business laws of Oman (comprised of the Foreign Business and Investment Law,⁶ Commercial Agencies Law,⁷ the Commercial Companies Law,⁸ the Income Tax Decree,⁹ the

³GIBB AND KRAMERS, *SHORTER ENCYCLOPAEDIA OF ISLAM*, 527.

⁴SHAW, *HISTORY OF THE OTTOMAN EMPIRE AND MODERN TURKEY*, 134.

⁵B. LEWIS, (ed.), *THE WORLD OF ISLAM*, 291.

⁶Foreign Business and Investment Law [hereinafter referred to as "FBIL"].

⁷Commercial Agencies Law [hereinafter referred to as "CAL"].

⁸Commercial Companies Law [hereinafter referred to as "CCL"].

⁹Income Tax Decree, RD 47/81, OGSO No. 718, June 1, 1981.

Decree on Contract Signing Procedure¹⁰ for the Sultanate, the Commercial Register Law,¹¹ and the Decree of Associations formed by the Decree of the Sultan).¹² In addition, legislation pertaining to labor, social security, land, insurance and banking has been promulgated, as well as numerous regulations and procedures in the form of ministerial decisions.

This volume of legislation has proved to be of major importance in that it has facilitated development of the country, its economy, and its people by providing an intelligible and comprehensive legal structure by which the business community has been able to operate with ever increasing sophistication.

4. *International Law*

International law has been, and is, of import in the Islamic legal tradition.¹³ Oman, predominantly an Islamic country with a long and preeminent history of international relations, has participated in the community of nations by means of its work in numerous organizations of Gulf and Arabic states, the United Nations, and in international conventions.

Some of the international treaties that the government of Oman has entered into include the International Organization for Agricultural Development (1974), the World Bank (1971), United Nations Educational Scientific and Cultural Organisation (1972), and the Political and Regional Asylum Treaty. Oman has further acceded to the Warsaw Convention, the International Organization for the Civil Aviation, and Air Carriage Treaties with countries as diverse as Jordan, Egypt, Pakistan, India, Lebanon, Thailand and Belgium. Moreover, Oman has maintained economic, social and cultural links with various countries by signing a number of treaties, for example the Cultural Treaty with Iran and Egypt, a cultural educational and information cooperation treaty with Jordan, a treaty governing economic relations and consular rights with the United States and an Extradition Treaty with the U.A.E.

5. *Sharia Law*

The legal structure in Oman combines a mixture of statutory law, necessitated by the day to day requirements of governmental administration and commercial and private life, and a developing and continuous common law. The trend in the Islamic world, however, is for decision makers to base judgements on "justice, equity and good conscience."¹⁴

In Oman this trend in the law is reflected even in the Commercial Com-

¹⁰Contract Signing, RD 48/76, OGSO 115, December 16, 1976.

¹¹Commercial Register Law [hereinafter referred to as "CRL"].

¹²Association formed by Sultan, RD 33/74, OGSO 61, August 15, 1974.

¹³Information Not Available.

¹⁴COULSON, CONFLICT AND TENSIONS IN ISLAMIC JURISPRUDENCE 107.

panies Law¹⁵ which states that the Committee for the Settlement of Commercial Disputes shall rely on and adhere to the following:

- decrees, laws and regulations in force in the Sultanate;
- the contract between the parties;
- established commercial practice; and
- whatever establishes justice and fairness between the parties involved in the dispute and leads to the stabilization and regulation of commercial transactions.

The principles of the Sharia are immutable, based upon the theory that the law is God-given and eternal. The Koran and Hadith form the basis of the Sharia or Holy Law and have been in existence since the beginning of the second century.¹⁶ By utilization of analogical deduction from the Koran and Sunna, in conjunction with the application of principles of equity to avoid injustice, a body of precedent has been established which provides answers to present day legal problems.¹⁷ The history of the Sharia law reveals that it developed in a similar way to the Anglo-American Common Law.

Sharia law has molded the attitudes of Oman's citizens, as well as that of the commercial community, so it can be said that Sharia reflects both the religion and the society prevalent in the country.

One of the difficulties with such a religious structure is that it consists in fact of several different systems. None of these are completely codified and they exist often as the application of customs and values rather than as operative legal requirements. In addition, the judgements of the Sharia court are not publicly available nor do they have any precedential status. As a result there is much uncertainty as to the application of Sharia law. This can result in increased costs for commercial enterprises in Oman, which may then be passed on to the government and the consumers.

Sharia courts usually resolve all nature of disputes in the outlying regions. Nearer to the capital, and in major cities, the Sharia Court's jurisdiction has not been restricted but parties have recourse to other forums which they may believe to be more convenient or technically suited for these purposes. Therefore, the Sharia courts in these areas tend to hear cases relating to family law¹⁸ and minor criminal and commercial cases; in practice the Sharia courts will also generally refuse to hear commercial cases. The Sharia is therefore evolving to integrate with the requirements of modern Oman.

¹⁵The Commercial Companies Law, RD 174, creating the Committee for the Settlement of Commercial Disputes.

¹⁶ASAF A.A. FYZEE, *OUTLINES OF MUHAMMADAN LAW*.

¹⁷N. COULSON, *CONFLICTS AND TENSIONS IN ISLAMIC JURISPRUDENCE* 4-7.

¹⁸For the general nature of the Islamic law of succession, see N.J. COULSON, *SUCCESSION IN THE MUSLIM FAMILY*.

6. *Criminal Justice System*

Another forum for the redress of grievances is provided by the criminal justice system. This system is activated either on its own initiative or at the request of a person to the governmental authorities. If an investigation of the facts indicates that criminal proceedings are warranted the matter will be referred to the Royal Oman Police who prepare a thorough report and submit their findings to the Criminal Court. That court relies upon several sources of law. There is a Criminal Code,¹⁹ a comprehensive piece of legislation, of which many sections are applicable to commercial activities. Other statutory sources of criminal law are Royal Decrees and ministerial decisions which may provide for the imposition of criminal sanctions.

An interesting feature of the criminal justice system is that the Criminal Court has jurisdiction not only to punish offenders, but to require them to compensate the injured party. This effectively streamlines the obstacles that an injured party must overcome to receive compensation as there is no need to resort to separate (and often duplicating) civil proceedings to attain redress.

Furthermore, the criminal justice system can be called upon to enforce the will of other arms of the judicial system, such as the decisions of the Committee for the Settlement of Commercial Disputes and other governmental bodies.

III. Existing Omani Laws and Decrees

1. *Banking Law*

The Banking Law of 1974²⁰ is one of the most advanced laws regulating banking activities in the Gulf. Immediately prior to its enactment the banking industry and the government's activities as the central banking authority were conducted through the Oman Currency Board established by His Majesty shortly after his accession to power in 1970. The Banking Law created the Central Bank of Oman, provided for the control of currency, the regulation of banking and the mechanism for making the Central Bank the lender of last resort within the banking system. This represented a major step forward for Oman and laid the foundation which enabled the country to develop one of the most sophisticated banking systems in the Arab world. The Central Bank has played an active role in overseeing the banking institution and encouraging local banks to develop and participate in both the local and international money market.

In Oman, credit has traditionally been generated by use of overdraft facilities. Regulations were issued in 1979 covering the purchase, discount and rediscount of commercial paper with the intention on the part of the Central Bank to generate a secondary money market thereby enhancing

¹⁹Royal Decree 7/74.

²⁰Banking Law of 1974, OGSO no. 73, Supp., Feb. 15, 1975.

liquidity within the country while alternatively eliminating the rather out-moded and essentially unsatisfactory overdraft facility approach to commercial credit activities.

Despite the difficulties that arise under Islamic law when dealing with interest, the Central Bank does fix interest rates periodically, thus encouraging multi-national transactions.

In the last decade, Oman has seen the emergence of a local and international financial community, thus warranting a tightening up of banking documentation, not only to comply with local monetary law and regulations but also to satisfy the demanding requirements of prudent banking practice and Central Bank audits and reviews.

2. *Commercial Business Laws*

In its recent development a series of laws have been enacted to guide the structure and direction of modern commercial and business practices.²¹ The entrepreneur will find a range of laws which fall within the scope of commercial law including the Foreign Business and Investment Law,²² the Commercial Register Law,²³ and the Commercial Companies Law.²⁴ In practice the procedural requirements of FBIL, CRL and CCL must be viewed as whole together.

A. COMMERCIAL COMPANIES LAW

The Commercial Companies Law²⁵ establishes five forms of commercial companies:

- General Partnership
- Limited Partnership
- Joint Venture
- Limited Liability Company, and
- Joint Stock Company

and follows the civil law concept that a commercial company is a contract between two or more persons. It is a comprehensive piece of legislation and regulates all aspects of commercial activity by a company, from establishment and management to dissolution.

i. General Partnership

A general partnership is formed when two or more juristic persons carry on business under a specific company name. This name shall not include names other than those of actual partners. A person who is not a partner

²¹For a detailed study, see DR. M. MUSLEHUDDIN, *BANKING AND ISLAMIC LAW* and DR. NEJATULLAH SIDDIQUI, *BANKING WITHOUT INTEREST*.

²²Foreign Business and Investment Law [hereinafter referred to as "FBIL"].

²³Commercial Register Law, [hereinafter referred to as "CRL"].

²⁴Commercial Companies Law, [hereinafter referred to as "CCL"].

²⁵Royal Decree 4/74, OGSO no. 56 Supp., June 1, 1974 as amended by Royal Decree 54/75, OGSO no. 93, Jan. 1, 1976.

and agrees to the inclusion of his name in the business, becomes liable as a partner to third parties acting in good faith. The partners' liability is unlimited and they are jointly and severally liable for the debts of the partnership to the full extent of their property.²⁶

ii. Limited Partnership

The limited partnership is a partnership in which there are one or more general partners whose liability in respect of partnership debts is unlimited, together with one or more partners whose liability is limited to the amount of their capital contribution. If the name of the limited partner is included in the business name he becomes liable as a general partner to any third party who, in good faith, believes him to be a general partner.²⁷ The limited partner's liability remains limited only so long as he does not participate in the management of the partnership, nor act in its name. If he does so participate or act, he may be held liable as a general partner for all or part of the partnership's debt.²⁸

iii. Joint Venture

Unlike the other forms of commercial companies, the joint venture has no juristic personality and cannot therefore be registered as such in the Commercial Register. It merely establishes a legal relationship between its members²⁹ and its existence may not be raised as a defense against claims by third parties as any third party dealing with it has only a contractual relationship with the particular member or members with whom it has dealt. If, however, the disclosure of the existence of the joint venture induces a third party to enter into a contract with it or any of its members, the laws governing the liability of general partnerships will apply.

iv. Limited Liability Company

The limited liability company³⁰ ("LLC") is the most common and practical vehicle both for conducting business in Oman and for foreign investment. It has a fixed capital divided into shares owned by two or more juristic persons whose liability is limited to the nominal value of their shares in the company's capital.³¹ The salient features of the LLC are that there must not be more than thirty members, and assignment of shares is subject to a statutory right of first refusal by the other members and the company. The appointment of auditors is optional unless the constitutive contract requires such an appointment, or the members exceed ten in number or the equity capital is more than RO 50,000 or such an appoint-

²⁶CCL art. 28.

²⁷*Id.* art. 48.

²⁸*Id.* art. 49.

²⁹*Id.* art. 51-55.

³⁰Limited liability company [hereinafter referred to as "LLC"].

³¹See later for discussion of share capital under FBIL.

ment is requested by members representing one-fifth of the capital.³² However as, subject to certain exceptions,³³ the minimum capital for foreign companies is RO 150,000,³⁴ all companies with foreign equity interests must have auditors. The minimum capital required for a wholly 100 per cent Omani company is RO 10,000.

The LLC is fully constituted and the liability of its members becomes limited when the constitutive contract has been signed by all its members, all authorized shares subscribed and fully paid up, and the company has been registered in the Commercial Registry.³⁵ There is no board of directors responsible for making management decisions but instead, one or more managers who conduct the day-to-day management of the company. These managers have full powers to act on behalf of and bind the company to the extent of the powers granted to them by the members. Their appointment and any limitation on their authority to act must be noted in the Commercial Register. Managers are personally liable to third parties without limit, for fraudulent or negligent acts, or acts which are beyond the scope of their authority.

The members (i.e., shareholders) of the company act by resolutions adopted at membership meetings to decide on matters such as policy, reorganization of capital, approval of accounts and the distribution of profits.

v. Joint Stock Company

The fifth form of commercial company is the joint stock company which is more appropriate if there are to be more than thirty members or if there is to be any public offering of shares. It is a commercial company with a fixed capital divided into negotiable shares, formed by not less than three persons, whose liability is limited to the nominal value of their shares in the company's capital.³⁶

The minimum capital required is RO 25,000 and the nominal value of a share may not be less than RO 10. The company's Articles of Incorporation require approval from the Minister of Commerce and Industry before registration. The public may be invited to subscribe for shares and detailed provisions for this and all share and bond dealings are set out in the CCL.³⁷

The management of the joint stock company is entrusted to a board of directors, comprised of three to twelve persons. Their term of office may not exceed three years, subject to re-election. The company is bound by all acts performed by the board, its chairman and/or managing director. Shareholders are entitled to participate in the management of the company only through ordinary and extraordinary general meetings.

³²CCL Art. 157.

³³FBIL Art. 3b.

³⁴FBIL Art. 3b.

³⁵CCL Art. 140.

³⁶CCL Art. 56.

³⁷*Id.* Art. 61-90.

A joint stock company is required to have at least one auditor appointed by the general meeting to serve until the next annual general meeting, subject to reappointment. The auditors, who must be professionals, have the right to examine the books and records of the company and in their report must reflect "the true financial condition of the company in accordance with generally accepted principles of accounting."³⁸

Certain types of business can only be conducted in Oman by way of a joint stock company³⁹ namely insurance, solicitation of capital or savings, investment for third parties, banking and commercial air transportation.

There are strict provisions relating to "self-dealing" by any member of these forms of commercial companies, excepting only joint ventures, and the shareholders of a joint stock company.⁴⁰ There is a strict duty of disclosure upon members and the prior consent of all members is required to conduct a similar business or enter into any contracts for their own account, whether directly or indirectly. A member, manager, or director who violates these provisions is liable to account to the company for any profit derived or for any damages suffered, and the transaction may be voided by the company.

B. COMMERCIAL REGISTER LAW

As in most countries in the Arab world with an active business community, Oman has a Commercial Register which is regulated by the Commercial Register Law.⁴¹ This law requires all companies, merchants (with certain exceptions), branches and agencies engaged in business to file the relevant particulars of their business including the name, specimen signature and scope of authority of each person authorized to sign for the company. These particulars are filed with the Ministry of Commerce and Industry in Muscat and in the regional registry for the area in which the company does business. The register also files judgments and orders made against a business as well as the sale, assignment or dissolution of the business. Periodically, documents evidencing basic details contained in the register are published in the Official Gazette and the public has the right, upon payment of the prescribed fee, to obtain extracts from, and access to, information on the file. The Register provides conclusive evidence of any data registered therein and the CRL states that information in the Register is conclusive proof of the authority of a person mentioned therein to bind a company vis-à-vis third parties acting in good faith.⁴² Information contained in the Register is presently being placed on computers for more or less instant retrieval by both the government and the public.

³⁸CCL Art. 111-114.

³⁹*Id.* Art. 5.

⁴⁰*Id.* Art. 8.

⁴¹Commercial Register Law [hereinafter referred to as "CRL"]. Royal Decree 3/74, OGSO no. 56, Supp. June 1, 1974.

⁴²CRL Art. 2:14.

C. FOREIGN BUSINESS AND INVESTMENT LAW

Foreign businesses in Oman are subject to particular scrutiny under the Foreign Business and Investment Law.⁴³

All businesses in which there is a foreign equity participation and which are conducted in the expectation of profit and not specifically exempted⁴⁴ from the provisions of the FBIL must obtain special authorization from the Ministry of Commerce before setting up business. The purpose of the FBIL is to control foreign participation in the Omani economy by requiring operations involving foreigners to be conducted through an Omani company with Omani equity participation.⁴⁵ The Committee on Investment of Foreign Capital which is the body which investigates proposed companies with foreign investment, is chaired by the Undersecretary of the Ministry of Commerce and Industry with a multi-ministry membership and advises the minister on matters pertaining to the FBIL, including applications for registration. Failure to comply with registration requirements can result in the imposition of fines. Whilst FBIL stipulates that Omani equity participation must not be less than 15 percent of the total paid-in capital, the Committee on Investment of Foreign Capital published in January 1982 a statement that foreign investment would in future only be permitted in the agriculture, fisheries, construction and industrial sectors and that a minimum of 75 percent Omani equity participation would be required. This percentage may however be reduced by the Minister of Commerce and Industry if he considers there are sufficient economic reasons to warrant a reduction, provided however that the foreign equity investment not exceed 49 percent of the paid-in capital.

The precise meaning of "doing business in Oman" is not specifically stated in the FBIL. However it does identify activities which are not to be regarded as doing business. These include (but not exclusively) the employment of a natural person in Oman; a representative office of a foreign bank; a foreign business which has no permanent establishment in Oman and which has no officer in the country for more than thirty days each year and transacts no business therein, and also a foreign business that has no assets or personnel in the Sultanate of Oman and conducts only isolated transactions.⁴⁶

In addition to such "non-business" activities, there are various exemptions⁴⁷ from the requirement of participation by Omani nationals, including for example companies acting solely under contracts with the

⁴³Foreign Business and Investment Law [hereinafter referred to as FBIL], Royal Decree 4/74, OGSO no. 49, Supp. Feb. 16, 1974, as amended by Royal Decree 2/77, OGSO No. 118, Feb. 1, 1977, and by Royal Decree 16/78, OGSO No. 145, Apr. 15, 1978.

⁴⁴CRL Art. 5(b).

⁴⁵*Id.* Art. 3.

⁴⁶FBIL Art. 5(b).

⁴⁷FBIL Art. 6.

government or its agencies, certain classified professions, banking by foreign banks.

D. COMMERCIAL AGENCIES LAW

The Commercial Agencies Law⁴⁸ defines a commercial agency as any agreement pursuant to which a foreign manufacturer or supplier commissions a merchant or company in the Sultanate to sell, promote or distribute goods or to offer services as an agent, representative, or middleman for such manufacturer or supplier.⁴⁹ Services such as travel, insurance, publication, tourism, transportation and advertising agencies are specifically subject to its requirements and the law covers the entire scope of agency agreements and operations, which has been held to include distributorships.

The practical effects of this decree on a foreign supplier are substantial, as the Ministry of Commerce and Industry may prohibit the importation of goods and merchandise of suppliers who do not have an independent commercial agent registered in Oman. The agent can be either a sole proprietor, in which case he must have been an Omani national for at least ten years, or an Omani company of which at least 51 percent of its shares must be owned by Omanis.⁵⁰ In either case the agency agreement must be in writing and must be approved by the Omani Chamber of Commerce. Thereafter it should be filed in the Register of Agents and Commercial Agencies. Re-registration must be undertaken every two years.⁵¹ If the agency agreement is not registered then it is deemed to be void.

When a commercial agency agreement is submitted for filing, the agent must satisfy the authorities that he can meet the warranties offered by the original producer or importer of the goods.⁵² The agent must also show, in relation to cars, machinery, motors or electrical or electronic appliances, that he will have replacement stocks and be able to provide service and maintenance for the goods covered by the agreement.⁵³

Article 7 of the CAL provides that an agency contract is to be of an exclusive nature. The principal is not permitted to sell or distribute his products, goods or services himself or through another agent or broker. Breach of this provision entitles the appointed agent to the profit or commission agreed upon in respect of the illegal transaction even though the agent has not participated in the sale.

Careful consideration should be given to the initial selection of an agent as unilateral termination by the principal, notwithstanding the terms of the agency agreement, is only permitted where there is a justifying breach by

⁴⁸Commercial Agencies Law [hereinafter referred to as CAL], Royal Decree 26/77, OGSO no. 126, June 1, 1977.

⁴⁹CAL Art. 1.

⁵⁰CAL Art. 3.

⁵¹*Id.* Article 9 and Ministry of Commerce Decision 9/77, OGSO no. 127, June 5, 1977.

⁵²*Id.* Art. 9 Ministerial Decision 10/77, OGSO no. 127, May 19, 1977.

⁵³Ministry of Commerce Decision 9/77 *supra*.

the agent. The CAL provides for the award of compensation for "abuse of rights."⁵⁴ Compensation will be awarded to an agent if a contract of unlimited duration is terminated without cause or if the principal refuses to renew a contract on expiry if the agent was successful in distributing and promoting the principal's products. Such awards have been known to amount to the equivalent of two years' anticipated profit.

E. THE COMMITTEE FOR THE SETTLEMENT OF COMMERCIAL DISPUTES

The Committee for the Settlement of Commercial Disputes ("Committee") was originally created to have jurisdiction to hear and decide disputes between merchants, companies, managers, auditors and liquidators, but this was subsequently expanded to cover commercial and company activities.⁵⁵

The Committee is not, strictly speaking, a court of law. It is composed of distinguished members of the Ministry of Commerce and Industry as well as leading figures in the local business community. Its jurisdiction incorporates the whole of Oman and the Committee is authorized to interpret and pronounce binding judgments on disputes in connection with commercial contracts, agency agreements, contracts of sale, leases and loans. In fact its adjudication covers all matters arising under the CCL.⁵⁶ The Committee has shown that it can act not only with objectivity and dispatch, but also with legal discretion.

Hearings are required to be open to the public but in practice all persons other than the ones testifying are excluded. Parties may not be represented by lawyers unless they have a certified power of attorney.⁵⁷

Equity governs the decisions of the Committee. It rules on the principles of what is "fair and reasonable" under the circumstances and the conduct of a party is evaluated on the basis of the "reasonable man" test.

Decisions are written and enforceable but there is no system of appeal or precedents. As the decisions are made on an ad hoc basis, it is difficult to establish a system of precedents that would serve to provide an element of predictability in matters of litigation.

The Committee has shown a keen appreciation of a wide range of important legal issues. It has enforced mortgages and caused foreclosure sales in favor of foreign banks against defaulting Omanis and has strongly supported standard banking practices in connection with letters of credit. In all, it has established a reputation as being a successful forum for the settlement of disputes.

However, in a recent Royal Decree,⁵⁸ it was announced that the Committee is to be replaced by an arbitration board to be known as the authority

⁵⁴CAL Art. 10.

⁵⁵CCL Art. 173-183 as amended by Royal Decree 54/75, OGSO no. 93, January 1, 1976.

⁵⁶*Id.* Art. 175.

⁵⁷*Id.* Art. 177b.

⁵⁸Royal Decree 79/81, OGSO no. 266, Oct. 1, 1981.

for the Committee of Commercial Disputes. This body is to be composed of judges appointed by royal decree. The judges who will form the initial authority have been selected but no royal decree has been issued confirming their appointment. It is expected that an appeal structure will be set up. Until such time as further legislation is passed the existing committee will continue to function as before. It is not expected that any changes with respect to policy will be instituted once the authority is in place.

F. TRADEMARK PROTECTION

While there is no specific trademark protection legislation in the Sultanate the Criminal Code does provide for penalties in the case of violation of a registered trademark. However as no registration system has yet been established it is not possible to invoke the protection of this decree. Despite concern shown by merchants and the Ministry of Commerce and Industry over the influx of spurious products into the local market, the Committee has indicated that it will not entertain cases involving violations or infringements of trademark until civil legislation is promulgated.

3. *Procedure for Signing Foreign and Internal Financial Transactions*

Throughout the last decade emphasis has been placed on the methods to be employed regarding the signing of foreign and domestic contracts by and on behalf of the government. Various decrees and ministerial decisions have been passed which have affected the procedures to be applied to contracts awarded by the various tender boards.

The 1976 Decree⁵⁹ states that no contract, agreement, or other undertaking signed in the name of or on behalf of His Majesty Sultan Qaboos bin Said, or the government for the purchase of goods or services shall be binding or enforceable unless executed in accordance with the decree.

It is important for the foreign contracting party to ensure that government contracts are correctly signed as the Government of Oman will not be liable for payment of any compensation to any contracting party or third party or be subject to any fines unless the provisions of the above decree have been fully complied with.

The method of signing varies according to the value of the contract and these financial limits have recently been increased.⁶⁰ For contracts the value of which is in excess of RO 250,000, the appropriate minister or other authorized official is empowered to sign together with the Deputy Chairman of the Finance Committee and the Undersecretary of Financial Affairs. Contracts for projects valued at between RO 50,000 and RO 250,000 require only the signature of the Undersecretary of Financial Affairs and the minister concerned. If the value of the contract is less than RO 50,000, the minister or his authorized official may sign alone.

⁵⁹Royal Decree 48/76, OGSO no. 115, Dec. 16, 1976.

⁶⁰Royal Decree 12/80, OGSO no. 189, March 1, 1980.

Contracts in excess of RO 500,000 must be sent to the Legislative Diwan (Department for Legislation) for scrutiny before signing.

The 1976 Decree states that government loans (either granting or receiving funds) can only be signed by the Sultan personally or by such person who has been given personal written consent. In respect of loans, investments, grants, bonds and guarantees, it is provided that the joint signatures of the deputy chairman and undersecretary are required. Letters of Credit need only be signed by the Undersecretary of Financial Affairs on the condition that the contract to which it pertained was signed as required by the decree.

The signing procedures have been further amended⁶¹ with respect to small contracts, less than RO 10,000, which may now be signed by the undersecretary of the ministry or the director of the directorate concerned, with the approval of the minister or the undersecretary of the ministry concerned.

4. *Tender Laws*

In the Sultanate most government departments and their agencies are obliged to issue tenders to fulfil their needs. The Tender Laws⁶² are detailed and exacting in their requirements.

There are in fact two parallel systems with respect to government contracts. First there is the General Tender Board which acts for all of the Ministries with the exception of the Royal Oman Police and the Ministry of Defence.

The General Tender Board is governed by two criteria depending on whether the contract is one for supply or for construction. With supply contracts the only Tender Board requirement is that the company must be registered at the Ministry of Commerce and Industry. It is possible to write to the Tender Board with a request to be placed on their lists but it is not essential for this to be done in order to submit a tender.

For construction contracts the rules are more complex. All construction contractors (local and international), architects, and consulting engineers need to be registered and to renew such registration each year. It is necessary for a company to pre-qualify on a given project and the tender will state the classification of company that is required. The classification is based on several factors including the capital of the company as evidenced in the Commercial Register.

In addition, a company must supply detailed data as to its previous experience, (including copies of completion certificates), technical staff, and details as to equipment that it possesses. Usually fifteen contractors from the relevant category are selected and the final contract is often of a stan-

⁶¹Royal Decree 37/80, OGSO no. 194, May 15, 1980.

⁶²Royal Decree 22/74, OGSO no. 56, June 1, 1974; Royal Decree 52/75, OGSO no. 93, Jan. 1, 1976; Royal Decree 31/79, OGSO no. 171, June 2, 1979; Royal Decree 37/80, OGSO no. 194, May 15, 1980.

<u>Class of Contractor</u>	<u>Size of Contract From (RO) to</u>		<u>Capital in Cash Not Less Than (RO)</u>
4th		15,000	15,000
3rd	15,000	75,000	25,000
2nd	50,000	350,000	50,000
1st	250,000	950,000	100,000
		1 million	
Excellent	650,000	or more	250,000

The General Tender Board has advised that foreign construction companies may be required to have capital in excess of RO 500,000. Each case will be studied individually by the Tender Board.

dard type based as Federation Internationale des Ingenieurs Conseils (FIDIC).

The major criterion used for deciding upon a tender is usually the lowest price and the only exception to that is if there is an emergency and one of the bidders presents a shorter completion date. There is also a preference shown to Omani contractors although in practice contracts exceeding RO 5 million are usually given to international contractors as the local companies do not as yet have the necessary experience.

The General Tender Board meets approximately once a week and there is also a similar Tender Board for the Salalah region. Recent legislation⁶³ has helped to streamline the procedure with smaller contracts. A ministry may now select a consulting company without tendering if the project is less than RO 100,000 and at least three quotations are obtained. The need for ministries to approach the Tender Board where modified orders of not more than RO 10,000 are to be placed is also obviated.

The Ministry of Defence ("MOD") Tender Board is worth a special mention in view of the large number of projects that it undertakes. Outside consultants are generally brought in for larger projects but they themselves are not allowed to bid and it is possible, although usually in emergencies, for contracts to be negotiated without going out to tender.

A company must register with the MOD and this is done by writing to the ministry and supplying evidence of having registered with the Ministry of Commerce and Industry. The MOD requires that the company either be an Omani partnership or have Omani participation. The MOD has its own internal categories, based upon the MOD's assessment of the size of work that the company is capable of performing. This classification depends, partially, upon the company's previous experience. There are no minimum capital requirements as with the General Tender Board and there are no formal rules as to how the MOD Tender Board operates.

⁶³Royal Decree 37/80, OGSO no. 194, May 15, 1980.

5. Income Tax

A new Income Tax Law⁶⁴ has been promulgated which is retroactively effective from January 1, 1981. It is wide ranging and there are provisions for the formation of a Taxation Committee to be established by a Royal Decree for the purpose of handling taxation appeals and resolving disputes.

The previous Income Tax Law of 1971 has been followed in that "companies" as defined by the Commercial Companies Law 1974, namely the general partnership, limited partnership, limited liability company, and joint stock companies, are still taxable as is any entity having a permanent establishment in Oman. The definition of "permanent establishment" has been widened and may have the effect of extending tax liability to a variety of business entities.

According to this law, tax is imposed on income arising in Oman and there are comprehensive clauses defining this. Powers have been vested in the Director of Tax Affairs ("Director") enabling him to disregard schemes that have been formulated with the aim of avoiding tax. In particular, by Article II of Chapter 3, it is provided that if a company enters into an arrangement with another entity, and it is the belief of the Director that the relationship has been entered into in a manner whereby the company intends to avoid a tax liability or achieve a reduced income for the same purpose, then the Director can levy a tax to reflect the liability that the company would otherwise have borne. This may have an impact upon management consultancy agreements entered into with a local company by a foreign investor who is also a partner in the local company. It will be of interest to see how this provision will be interpreted in practice by the taxing authorities.

There are detailed regulations governing the preparation of accounts by companies for submission to the tax authorities; deductible expenditure; the treatment of losses; income statements and the keeping of proper books of accounts; the collection and refunding of tax; attachment and sale of assets by the director to meet tax demands and fraudulent actions (including bribery) by employees of the taxation department.

The law prescribes taxation rates which are in fact the same as in the previous Income Tax Law, and range from 5 percent on taxable income which does not exceed RO 5,000 up to 50 percent where it is in excess of RO 500,000. There are also detailed rules as to the depreciation of capital assets together with the amortization rates to be adopted per year.

The Omani government may enter into double taxation treaties with foreign governments. There are also specialized provisions relating to petroleum companies with tax being levied at the rate of 55 percent as from November 14, 1970 which, again, is the same as under the earlier decree.

A Royal Decree passed in 1975⁶⁵ (which has not been repealed) provided

⁶⁴Royal Decree 47/81, OGSO no. 218, June 1, 1981.

⁶⁵Royal Decree 21/75, art. 1, OGSO no. 82, July 1, 1975.

that companies wholly owned by Omanis were to be exempt from tax for a period of five years as from July 1, 1975. This exemption was extended for a further five years in 1980.⁶⁶ The 1975 decree also contained provisions exempting companies which are involved in industry, agriculture, and fishing with paid up capital in excess of RO 100,000 from taxation for five years from the date of their formation. Companies with a paid up capital in excess of RO 100,000 participating in the development of the national economy are also exempt⁶⁷ from the payment of income tax for five years with one permissible extension of a further five years. While the Income Tax Decree of 1971 together with its amendments has been abolished, there are saving provisions in the Fourth Schedule of the new law which allow companies to continue to take advantage of these particular Royal Decrees.

In general therefore, the new decree is far more extensive than the one that it has replaced and should be carefully studied before finalizing any investment plans.

6. *Customs*

During 1974, a Royal Decree⁶⁸ was passed, removing customs duties from exports not required for local consumption, which assisted in encouraging business activities. As a further incentive to local industry a tariff of import duties has been imposed on goods entering the Sultanate. A standard of 2 percent of the value of the goods is charged on most imports but this can be increased to 25 percent in respect of imported goods comparable with and competing with locally made products,⁶⁹ e.g., certain paints.

A comprehensive law of customs management was enacted in 1978.⁷⁰ This is administered by the Royal Oman Police and provides for the management and administration of customs, the licensing and controlling of warehouses and specifies the liability to customs duties.

The inspector general is given power to designate appointed ports and airports for customs purposes and all incoming craft must use only these ports to enter Oman. On arrival they must report to the proper customs officer and furnish details of all cargo aboard. There are detailed provisions relating to unloading, storage and warehousing procedure, the removal of cargo and its examination in the presence of the owner prior to clearance.

Similar provisions apply to the export of goods and the clearance and departure of vessels or aircraft. Customs officers have the power to stop and board any craft within Oman or its territorial waters. Breach of the regulations may result in the forfeiture or seizure and eventual sale of the goods and/or the ship or aircraft.

The importation of certain goods without the prior consent of the inspec-

⁶⁶Royal Decree 61/80, OGSO no. 198, July 15, 1980.

⁶⁷Royal Decree 65/77, OGSO no. 134, Oct. 1, 1977.

⁶⁸Royal Decree 52/74, OGSO no. 69, Dec. 15, 1974.

⁶⁹Royal Decree 17/78, OGSO no. 146, May 1, 1978.

⁷⁰Royal Decree 22/78/ OGSO no. 147, May 15, 1978.

tor general is strictly prohibited.⁷¹ These include arms and ammunition, alcohol and certain drugs, and are listed in the First Schedule of the Decree. The export of these items is also prohibited with the addition of a ban on the export without consent from the inspector general of Maria Theresa dollars, antiques and archaeological manuscripts. Legal proceedings may be brought to enforce the provisions of the Customs Laws by or against the director general.

Only licensed importers, registered in the Commercial Register (*i.e.* registered merchants and companies) are permitted to import goods.⁷²

7. *Industrial and Economical Development Laws*

A prime aim of the government is to promote industrial activity in Oman. In the Economic Development Law⁷³ is stated that industrialization is to be achieved by means of free and unrestricted competition. Restrictions are only to be imposed where they are necessary for the advancement of the economy. Specific application setting out valid reasons must be made for such restrictions to be imposed. The protection thus given can be withdrawn if, for example, excessive prices are charged. To help promote development a Development Council was established in late 1974⁷⁴ and then in 1975 an Industrialization Committee was formed.⁷⁵ This is an advisory body to the Director General of Industry who reports to the Minister of Commerce and Industry. Inter-related with the laws relating to the promotion and protection of industry are those governing the grant of industrial licences.⁷⁶ A licence is required for any industrial installation and before it can be set up or changes made in the capacity, size, aim or location of the installation the appropriate industrial licence must be obtained from the Directorate General of Industry.

8. *Regulation of Weights and Measures*

In 1978 regulations were passed⁷⁷ requiring every producer and importer of manufactured goods to ensure that information as regards the weight, size, and active ingredients of all products are displayed on the external label. All business stores are required to display clearly the selling price of every item on sale; moreover they are obliged to keep price lists for inspection.⁷⁸ During the middle of the decade the Sultanate effected a changeover to the metric system of weights and measures.⁷⁹

⁷¹Royal Decree 22/78, OGSO no. 147, May 15, 1978, Title IV Part VIII Art. 45 and 46.

⁷²Notice to importers dated Nov. 26, 1978.

⁷³Royal Decree 9/75, OGSO no. 75, March 15, 1975 (Law No. 1).

⁷⁴Royal Decree 41/74, OGSO no. 68, Dec. 1, 1974.

⁷⁵Royal Decree 16/75, OGSO no. 79, May 15, 1975.

⁷⁶Royal Decree 17/75, OGSO no. 79, May 15, 1975.

⁷⁷Ministerial Decision 7/78, OGSO no. 143, March 15, 1978.

⁷⁸Ministerial Decision 32/79, OGSO no. 179, Oct. 1, 1979.

⁷⁹Royal Decree 38/74, OGSO no. 65, Oct. 15, 1974 and Royal Decree 15/75, OGSO no. 79, May 15, 1975.

9. *Administrative Laws*

The administrative arm of the government plays an important role in Oman. Specialized committees have been formed within ministries to deal with technical disputes requiring expertise, as for example the committee set up to resolve land disputes.⁸⁰

Moreover, a strong sense of increasing Omani identity has become apparent in the administration of government agencies. This is exemplified by the law governing the Administrative Apparatus of State⁸¹ and the formal promulgation of detailed regulations and procedures. Compliance with tax, registration and agency laws have also undergone increasing scrutiny.

The Conflict of Interest Decree⁸² is aimed at the avoidance of conflict or opposition of interests and the prevention of the misuse of public positions in granting government contracts. Oman has had a comprehensive conflict of interest law since 1974. The issue received new attention recently with the issuance of the new law which went into effect on June 1, 1982.

Government officials are forbidden by this decree from using their influence on behalf of commercial enterprises and more specifically from sponsoring private interests in their dealings with the government or advising private interests on securing government business. There is no exception in the decree to those prohibitions as they apply to an official's own activities, but the decree contains separate rules for companies in which a government official has an ownership interest. As clarified by an explanatory note incorporated in another recent royal decree, the conflict of interest law prohibits government officials and their defined relatives from possessing interests in enterprises doing business with areas of the government for which the official has responsibility, other than those interests they had declared prior to taking up public office. As originally issued it required prior approval of any contracts or other dealings between the government and any commercial enterprises in which a government official has an interest and of any outside employment by government officials. The recent explanatory decree eliminates the requirement of advance approval and contemplates that His Majesty the Sultan will determine in each case whether dealings that are brought to his attention require special consideration or approval.

10. *Regulation of Professionals*

A ministerial decision has been issued concerning applications for licences and qualification requirements of health care professionals.⁸³ The

⁸⁰Ministry of Land Affairs & Municipalities Ministerial Decision 11/79, OGSO no. 176, Aug. 15, 1979.

⁸¹Royal Decree 26/75, as amended by Royal Decree 35/75, OGSO no. 86, Sept. 1, 1975.

⁸²Information Not Available.

⁸³Ministry of Health Decision 5/79, OGSO no. 171, June 2, 1979.

Ministry of Commerce and Industry has circulated a notice to professionals warning them to limit their practice to areas of their competence and has set out guidelines concerning the unauthorized practice of law by firms not licensed to do so. There is also a trend towards stricter examination of applications for professional licences of all kinds, often in the context of registration of branches and agencies or the enforcement of the Income Tax Law.

11. *Insurance*

The Insurance Companies Law (the "ICL")⁸⁴ together with a Ministerial Decree⁸⁵ laid down the requirements for the conduct of insurance business in the Sultanate. All companies wishing to participate in the insurance or reinsurance business must comply with the ICL and obtain a permit. The Ministerial Decree has set forth detailed provisions regulating, among other things, the creation of reserves, licensure, insurance and reinsurance operations. A register of licensed insurance companies is maintained at the Insurance Finance Houses section of the Ministry of Commerce and Industry.⁸⁶

Article 6 of the recent directive⁸⁷ requires insurance companies in the Sultanate to maintain a policy register and claims register for direct insurance and a treaties register and claims register for reinsurance operations.

An insurance company is also required to submit detailed information evidencing its liabilities for life insurance and general insurance within six months from the date of the end of the financial year.⁸⁸

There are provisions for the allocation of funds and an insurance company carrying on the business of life insurance is obliged to maintain a sum of money equivalent to 100 percent of the total liabilities resulting from that business.⁸⁹ Other regulatory provisions in the directive provide for actuary investigation and strict audit procedures.⁹⁰

Reinsurance operations are also governed by this decision and reinsurance outside the Sultanate or transfer of premiums for reinsurance purposes is prohibited subject to the company's retention of the excess risk.

12. *Land Law*

At the beginning of the 1970s, all matters pertaining to ownership, transfer of lands and any dealings therewith, such as mortgages and leases, were

⁸⁴"ICL" Royal Decree 12/79, OGSO no. 67, April 1, 1979.

⁸⁵Ministry of Social Affairs and Labour Decision 5/80, OGSO no. 192, April 15, 1980.

⁸⁶Ministry of Commerce & Industry Decision 31/79, OGSO no. 180, Oct. 15, 1979.

⁸⁷Ministry of Commerce and Industry Ministerial Order 5/80, OGSO no. 189, March 1, 1980.

⁸⁸*Id.* Art. 8.

⁸⁹*Id.* Art. 12.

⁹⁰*Id.* Chapter 4.

solely within the ambit of the Sharia courts. Since then, the Ministry of Land Affairs and Municipalities has been established and there is now a system of compulsory registration of land, which is maintained by the ministry, although the Sharia courts still retain jurisdiction in these matters.

The existing system of land ownership was established in 1972⁹¹ to formalize the distribution and organization of land within Oman. Foreigners and companies (even 100 percent Omani owned) are not permitted to own land in Oman unless specifically exempted by Royal Decree. At present a company which already owns land registered in its name at the ministry is permitted to retain its ownership but cannot acquire registered title to any further land. This restriction was amended in 1981 by decree⁹² so that foreigners and companies may be granted a beneficial interest in land for a period not to exceed 30 years as long as the land is used to realize an economic objective in commerce, industry, agriculture or other like purposes. On November 8, 1982 regulations were published pursuant to RO 5/81 which elaborate on the rights and duties that arise to the beneficiary and owner under the transaction. In general the regulations provide that during the term of beneficial interest the beneficiary has all the rights of ownership providing he complies with the terms of the contract granting the interest.

The Decrees of 1972 established the principle that a legal document is required to prove ownership of land by deed or occupation. Detailed provisions are laid down in a Ministerial Decision⁹³ stipulating how this is to be done. Provision was made for an occupant to obtain a document of title after proving occupation for a requisite period, according to the usage of the land. An Omani who did not own or occupy land was entitled to apply for the grant of a plot of land within a town boundary.⁹⁴ Non-agricultural land outside the towns was designated for private housing projects, commercial areas, and industrial areas. State owned lands could be leased or sold by public auction and the necessary administrative apparatus was established by creating various boards within the ambit of the Ministry of Land and Agriculture. These boards comprise a technical committee, a legal committee and an administrative committee.

The administrative functions of the ministry have been further extended and local committees have been established to investigate and settle land disputes and oversee the distribution of plots.⁹⁵

All dealings with land whether by leases, mortgage, inheritance or otherwise, must be registered at the ministry.⁹⁶ Fees for registration are also imposed.⁹⁷

⁹¹Royal Decree 4/72 and Royal Decree 6/72—citation unknown.

⁹²Royal Decree 5/81, OGSO no. 209, Jan. 15, 1981.

⁹³Ministerial Decree 17/80, OGSO no. 200, Sept. 1, 1980.

⁹⁴*Id.*

⁹⁵Ministry of Land Affairs & Municipalities, Ministerial Decision 11/79, OGSO no. 176, Aug. 15, 1979.

⁹⁶Ministerial Decree 29/80, OGSO no. 201, Sept. 15, 1980.

⁹⁷Ministerial Decree 10/76, OGSO no. 103, June 1, 1976.

In 1978, a law was issued for the expropriation of land for the public benefit, either as a permanent acquisition or temporarily, such as in the case of emergencies including flooding or the outbreak of disease.⁹⁸ In any such case, the owner is entitled to monetary compensation determined by local committees. Provision has also been made for certain lands to be designated for the purpose of tourism which cannot be disposed of without governmental consent.⁹⁹

A strong sense of social responsibility is evident in this area of legislation. As early as 1973, a decision was published limiting the increase of rents except in specific circumstances and there are similar provisions relating to security of tenure. In addition, there is the Popular Housing Law,¹⁰⁰ which allows for the provision of low-cost housing for Omani nationals with limited incomes, whereby repayment can be made in instalments over a period of thirty years.

13. *Labor Law*

During the past decade, an extensive body of labour law has been enacted in the Sultanate. The Ministry of Social Affairs and Labour was established in May 1972 and is charged with the administration of the various labor and social security laws.

The principal law relating to labor relations is the Oman Labor Law¹⁰¹ which, subject to certain excepted categories such as government employees, domestic and casual staff, is applicable to all employment within Oman, whether the parties be Omani nationals or expatriates. It establishes certain fundamental rights for the employee including the right to a written contract, annual paid leave, sick pay, severance pay and the right not to be dismissed without due cause. There are specific provisions relating to the employment of the physically disabled, women, children and juveniles, including the right to take maternity leave and still retain the employment. The Ministry is empowered to enforce these rights and has also established a detailed grievance procedure to settle both individual and collective disputes, by which the individual's rights are protected.

The rapid economic development of Oman has meant that a substantial number of expatriate employees have been required and there is a strong awareness of the fact that all employees of whatever nationality should be treated alike.

Clearance must be obtained from the Ministry of Labor and the various labour permit procedures fulfilled before an employer is permitted to import employees.¹⁰² The Labor Law also provides that clearance from the

⁹⁸Royal Decree 64/78, OGSO no. 161, Jan. 1, 1979 and Ministry of Land Affairs Decision 6/80, OGSO no. 192, April 15, 1980.

⁹⁹Royal Decree 33/78, OGSO no. 149, June 15, 1978.

¹⁰⁰Royal Decree 35/77, OGSO no. 126, June 1, 1977.

¹⁰¹Royal Decree 34/73—Citation unknown, [hereinafter referred to as the "Labor Law"].

¹⁰²Labor Law, Art. 19.

ministry will only be given if the employee possesses "technical qualifications or abilities which the country needs and which is not available among citizens of the Sultanate, or where the number of Omanis is insufficient to meet the demand."¹⁰³ The minister has discretion to authorize employment of unskilled foreign labor.

A Ministerial Decision¹⁰⁴ proscribes the employment of any person other than an Omani citizen as a driver, guard, unskilled worker, assistant to skilled worker or Arabic typist without consent from the ministry. Once permission has been obtained to import an expatriate employee, his conduct and welfare, including accommodation and health, become the responsibility of the employer. It is not permitted for an employer to employ an expatriate not sponsored by him. Since 1974 it has been possible¹⁰⁵ for the employer to transfer his sponsorship of an employee through the ministry to another employer if there is not sufficient work available.

It was only recently made possible for an employee to apply for a transfer of sponsorship in certain limited circumstances such as:

1. failure of sponsor to pay salaries,
2. death or bankruptcy of sponsor, and
3. long absence of sponsor from Oman.¹⁰⁶

It is provided by the Labor Law¹⁰⁷ that employers with fifty or more workers must assist with the vocational training of Omanis either by establishing training programs of their own and/or by contributing to the schemes run by the ministry. These schemes are funded by the levy of the vocational training tax on companies employing more than fifty workers of 5 percent of the total salaries of all employees less the salaries of Omani nationals.¹⁰⁸

In addition to protecting the rights of an employee during his employment, advances have been made in the realm of social welfare. A Minimum salary of R.O. 60 per month is payable to unskilled workers¹⁰⁹ and a Social Security Law¹¹⁰ (applicable only to Omanis) has been enacted. Under the Law of Compensation for Industrial Injuries¹¹¹ compensation is payable to any employee covered by the Labor Law in the event of his partial or complete disability or death resulting from occupational injury or illness occurring in the course of work or on the way to or from work. Compensation is calculated on the basis of a basic wage and on the extent of disability incurred.

¹⁰³ *Id.*

¹⁰⁴ Ministerial Decision 5/78, OGSO no. 146, May 1, 1978.

¹⁰⁵ Ministerial Decision 16/74, OGSO no. 58, July 1, 1974.

¹⁰⁶ Ministerial Decision 4/80, OGSO no. 188, Feb. 15, 1980.

¹⁰⁷ Labor Law, Art. 22.

¹⁰⁸ Ministerial Decision 1/82, OGSO no. 234.

¹⁰⁹ Ministerial Decision 13/79, OGSO no. 183, Dec. 1, 1979.

¹¹⁰ Royal Decree 61/77, OGSO no. 133, Sept. 21, 1977.

¹¹¹ Royal Decree 40/77, OGSO no. 127, June 15, 1977.

14. *Maritime Law*

A new maritime Law¹¹² has been promulgated which came into effect on August 2, 1981. The new law is comprehensive and deals with registration documentation, ownership, leasing, and control of vessels. The duties of sailors and agents are defined in some detail and there are provisions for maritime works contracts, maritime mortgages and transportation of goods and passengers. Finally, the Maritime Law also regulates maritime insurance with associated provisions dealing with accidents or damage being caused to the vessel.

15. *Environmental Law*

The first Marine Pollution Control Law¹¹³ was enacted by Royal Decree as early as August 3, 1974. The law aims to prevent and eliminate all forms of water pollution in and around Oman so as to preserve the ecology of the area. The Council for the Conservation of Environment and Prevention of Pollution was established by Royal Decree¹¹⁴ and this agency monitors all forms of environmental pollution and, in particular, marine pollution. This will obviously have a considerable impact upon manufacturing and construction industries operating in Oman.

A further Royal Decree was promulgated in June 1981¹¹⁵ with the intent of safeguarding marine resources. This provided for the Ministry of Agriculture to establish a Council of Marine Resources Administration entrusted with overseeing the development and exploitation of marine resources.

IV. General Policy Decisions

A basic policy decision to be made by Oman is whether or not to develop a single integrated comprehensive commercial law which would combine general "commercial law" (negotiable instruments, documents of title, sales and secured transactions) with the "commercial common law" (namely, contracts, integration of security interests, liens, enforcement of defaults in commercial transactions by forced sale, and execution upon judgements). In addition to these two general categories, a decision must be made whether or not to include related laws which bankers and businessmen operating within Oman feel would be useful (e.g., escheat, commercial leases, common carriers).

Obviously a law with such broad scope cannot be effectively applied to certain categories of individuals and daily transactions occurring within Oman. However, to ensure that such a commercial law is not seen as applying only to "foreign transactions" the general or protective provisions

¹¹²Royal Decree 35/81, OGSO no. 216, May 2, 1981.

¹¹³Royal Decree 34/74, OGSO no. 61, Aug. 15, 1974.

¹¹⁴Royal Decree 63/79, OGSO no. 184, Dec. 15, 1979.

¹¹⁵Royal Decree 53/81, OGSO no. 219, June 15, 1981.

should apply to all persons or transactions with a situs in Oman. These provisions would be mandatory for all companies required to obtain trade or professional licences and would be available on a voluntary basis to all other persons.

The critical fact which would determine whether any particular person or entity would be subject to such a proposed commercial law would be whether they were required to acquire a trade or professional licence and register in the Commercial Registry of Oman. All persons within that category would be subject to the provisions of the commercial law and all the penalty and enforcement provisions thereof, except when a particular provision in the law allows a ministry to exempt certain classes of persons or when individuals are permitted to vary the provisions of the law by agreement.

A substantial portion of the proposed commercial law should be self executing without the necessity for further government action, since the law would simply establish basic rules of conduct affecting the relationship among parties to business transactions. An example of this would be provisions dealing with letters of credit governing the issuance, validity, and conditions of letter of credit in a manner consistent with international law, trade, and usage. At present there is no legal basis or law in Oman governing the rights and obligations of the parties dealing under letters of credit notwithstanding the fact that they are used every day. The government does however recognize the lacunae in the law and is in the process of drafting and evaluating a commercial law.

1. Selected Substantive Points

The following are central substantive provisions worth specific mention.

A. GENERAL CONTRACTS

The basic framework for contractual relationships should embrace both the Islamic system, which emphasizes "fair dealing" and the common law system. General provisions such as unconscionability, the statute of frauds, and notice provisions, should apply to all contractual relationships within Oman. The general provisions of contract law should be applicable to all contracts entered into by commercial companies or merchants, by the government or by any other persons where the contract is in excess of RO 10,000. (Of course, the general contract provisions may, at the option of the parties, be extended to persons for whom they are not mandatory).

B. INTERNATIONAL FINANCIAL LAW

In international commercial transactions (e.g., as documents of title, letters of credit, regulation of common carriers, the shipping, storage and distribution of dangerous materials and banking relationships) the nature of which warrant the application of internationally accepted legal principles, the proposed law should adopt the prevailing international local framework

and specifically allow for ministries or parties to adopt other international standards where necessary.

C. SECURED TRANSACTIONS

One of the most important areas where a proposed commercial law should attempt to integrate legal principles is that of secured transactions. Provision needs to be made for the registration and enforcement of general secured transactions and security interests in personal property, possessory liens, bankruptcy provisions, and forced sales and execution on judgement. It is essential that all such provisions be consistent.

D. INTEGRATION WITH CURRENT CRIMINAL LAW

Provisions in the proposed commercial law relating to fraud and deceit should be complementary to the Criminal Law provisions dealing with the same subject. There should be no conflict between civil and criminal provisions.

E. INVESTIGATORY POWERS OF MINISTRIES

The proposed commercial law should provide for "protective statutes" giving the responsible ministries extensive investigatory powers and the right to impose fines or other penalties. However all such administrative proceedings should be subject to record keeping and public hearing requirements with a right of appeal to a Commercial Tribunal.

F. ADMINISTRATIVE REQUIREMENTS

It has been suggested that the administration of a comprehensive commercial law might not be feasible within the Sultanate at the present time because of the lack of an effective governmental infrastructure. The proposed commercial law should contain general provisions and guidelines which can serve as an effective legislative framework for many years, providing substantial opportunity for responsible ministries to develop specific rules and regulations as necessary. The only area where real administrative input is essential is in the expansion of the Commercial Register office to accommodate the registration and filing of liens, commercial agents, common carrier regulations, and annual and interim corporate reports. However, such provisions would only require the establishment and development of efficient registration mechanisms, and could serve as a very effective means of training administrators without government expense since all of the filing requirements can be fully financed by a system of fees. With the advent of the computer within the Sultanate, this should be no more than a routine programming problem.

G. CHOICE OF LAW PROVISIONS

A very liberal choice of law provision should be incorporated to allow parties to choose the law and jurisdiction which will govern a particular contract or commercial transaction. However, while persons would have substantial permissive opportunity to select other laws, every Omani in every transaction involving an Omani "situs" should be protected by a provision which allows the Omani, at his option, to require the application of local law and the procedure related thereto.

H. COMMERCIAL COMPANIES LAW

As commercial development becomes increasingly complex and sophisticated, the commercial companies law will need to follow suit. Increasingly, specific regulations will assist the business community and guide their conduct to comply with the law.

I. LAND LAW

It is expected that regulations to implement and facilitate the ownership of property by commercial companies will be issued and the current registration system expanded.

J. THE COMMITTEE

The work of the Committee for the Settlement of Commercial Disputes is generally known to meet a high standard of quality. Its opinions are carefully reasoned and drawn, and if made available to the business community would influence and direct its conduct. As the number of recorded decisions increased the amount of litigation should be minimized by requiring potential litigants to conform with commercially acceptable standards of behavior. Moreover it would facilitate negotiations and settlements by providing information on how the committee has responded in similar situations. It is to be hoped that the Trade Arbitration Board will continue to provide and expand this practical and effective forum.

V. CONCLUSION

It appears from the increasing number of lawyers employed by governmental agencies, that both the creation and enforcement of laws and regulations are interlocked with economic development.

The government appears to be moving effectively to meet the needs of a rapidly developing country and the need for a commercial law is self-evident. The fundamental issue is that any future legislation recognizes the practical realities of the way business is conducted in the Sultanate of Oman and addresses itself to that framework and the problems extant within it.